VERDICTUM.IN

2026:DHC:9200-DB

$~31

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 07th OCTOBER, 2026

IN THE MATTER OF:

\# **CNR No. DLHC010231382026**

\+ MAT.APP. F.C. 184/2026, CM APPL. 34890/2026 &

[redacted] .....Appellant

Through: Mr. Dalip Kumar Santoshi, Advocate with Appellant in person

versus

[redacted] .....Respondent

Through: Mr. Sauraj Yadav, Mr. Bhaskar Yadav, Advocates

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD
HON'BLE MS. JUSTICE RENU BHATNAGAR

O R D E R

% **07.10.2026**

CM APPL. 34889/2026

1. This Application has been filed on behalf of the Appellant seeking condonation of delay of 130 days in filing the present Appeal.

2. For the reasons stated in the Application, the same is allowed. The delay of 130 days in filing the Appeal stands condoned.

3. The Application is disposed of.

CM APPL. 34891/2026

4. This Application has been filed on behalf of the Appellant seeking condonation of delay of 125 days in re-filing the present Appeal.

VERDICTUM.IN

5. For the reasons stated in the Application, the same is allowed. The delay of 125 days in re-filing the Appeal stands condoned.

6. The Application is disposed of.

MAT.APP.(F.C.) 184/2026 & CM APPL. 34890/2026

7. Aggrieved by the Order dated 07.08.2025 passed by the learned Family Court while dealing with an application under Section 12 of the Guardians & Wards Act, whereby the Respondent herein has been granted a limited visitation right to their minor child by the learned Family Court on every 1st and 3rd Saturday of every month from 3:00 PM to 5:00 PM in the Children Room, Family Court, North-West, Rohini, Delhi.

8. The learned Family Court has also directed that in case of any exigency, if the Appellant herein is unable to bring the minor child for effecting the visitation rights on the scheduled date and time, then it is the duty of the Appellant herein to inform the Respondent herein and his Counsel about the same well within time and then the visitation shall be shifted to the immediately following Saturday at the same time. The Appellant mother seeks to challenge the said Order by filing the instant appeal.

9. Shorn of unnecessary details and limited only to the issue of visitation rights, the facts in brief, leading to this appeal are as under:-

i. The marriage of the Appellant and the Respondent was solemnized on 18.02.2010 according to Hindu rites and customs.

ii. The couple was blessed with a child (son) on 19.07.2011. The child is therefore about 15 years of age as in July, 2026.

iii. Matrimonial disputes arose between the Appellant and the

VERDICTUM.IN

Respondent and proceedings under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (*hereinafter referred to as the* 'Act') were initiated by the Appellant herein.

iv. Material on record discloses that a petition under Section 125 of the CrPC was also filed by the Respondent. Though there are other proceedings also, but the record as filed in this Court does not give any details regarding the same.

v. Material on record discloses that the parties have entered into a settlement on 30.05.2017 in the proceedings under the Domestic Violence Act. The terms of settlement indicate that the parties had agreed to dissolve their marriage seeking divorce by mutual consent without levelling any allegations against each other and the Respondent herein agreed to pay a sum of Rs.5 lakhs to the Appellant wife *qua* settlement of all her claims. The manner in which the said amount has to be paid has also been stated in the said settlement. It was also agreed between the parties that the custody shall remain with the Appellant mother. However, the Respondent herein was permitted to meet the child on 2nd Saturday of every month for a period of three hours at Children Room in the court premises and the travel expenses were to be borne by the Respondent.

vi. Another supplementary settlement agreement dated 05.09.2017 was entered into between the parties during the proceedings under Domestic Violence Act. Pursuant to which the marriage inter se the parties was dissolved by mutual consent. The said settlement entered into between the parties indicate that the

VERDICTUM.IN

parties had agreed that the child would remain in custody of the Appellant herein and the visitation arrangement agreed upon between the parties under the settlement was only till the passing of the decree of divorce by mutual consent. The other terms of the settlement by which the marriage was dissolved are not stated as it is not relevant in the adjudication of the present case.

vii. Pursuant to the settlement, the petition under Section 12 of the Guardians & Wards Act, 1890 has been filed by the Respondent herein which has led to this order.

10. Notice was issued in the applications for condonation of delay on 21.05.2026. Service was affected on the Respondent and the Respondent is now represented through a Counsel. For the reasons stated in the application, the delay in filing and re-filing has already been condoned and this Court is inclined to decide the matter on merits.

11. Undoubtedly, the parties have entered into two settlement agreements, both during the proceedings under the Domestic Violence Act.

12. In the settlement entered into between the parties, during the proceedings under the Domestic Violence Act, visitation rights were given to the father for 2nd Saturday of every month for a period of three hours at Children Room in the court premises. In the supplementary settlement agreement arrived at between the parties during the same proceedings, however, the visitation arrangement agreed upon between the parties was only till the passing of the decree of divorce.

13. This Court expresses displeasure in the manner in which the settlement has been arrived at between the parties. The parties amongst

VERDICTUM.IN

themselves cannot agree to deprive a child of the presence of a father/mother by mutual agreement. Such an agreement affects the growth and development of the child and this Court is of the opinion that the presence of both parents is necessary for the proper development of any child. Therefore, it is directed that in any mediation settlement between the husband and wife, a mutual agreement by which one of the parties decides to abdicate his/her responsibility as a father/mother cannot be accepted. The doors of a parent cannot be shut to the detriment of a child, and the courts, in exercise of its *parens patriae* jurisdiction, cannot encourage such kinds of settlement agreements which operate to the prejudice of the child. No doubt, the custody can be given to either of the parent but to completely deprive the child of one of the parents cannot be permitted by the courts. A child is a victim in any custody battle and in the acrimony between the husband and wife, the child cannot be made a victim. One parent cannot take a stand to deprive the child of the love, affection and bonding of other parent and courts cannot be a party to such an understanding.

14. A contention by one of the spouses that the other spouse is a complete villain and that spouse alone is entitled to the custody of the child should not ordinarily be accepted and courts must be wary of such a stand taken by one of the parties. A child of 15 years of age requires guidance of a father and the love and affection of the mother and this is a basic right of any child and such right cannot be denied by parents and more particularly by the courts. It is often stated that a child cannot be made as a football between two parents at his/her own detriment.

15. The principles enunciated by the Hon'ble Supreme Court in Rosy Jacob v. Jacob A. Chakramakkal, **(1973) 1 SCC 840** underscore that Orders

VERDICTUM.IN

concerning the custody of minor children are temporary in nature and remain subject to variation in the best interests and welfare of the child, even if passed on consent decree Such orders cannot be regarded as immutable or allowed to operate as a fetter upon the Court's continuing duty to secure the child's welfare, which remains the paramount consideration. The circumstances, needs and interests of a growing child are liable to evolve with the passage of time, and a custody arrangement that may have been appropriate at one stage may cease to serve the child's best interests at a later stage. The relevant portion is reproduced herein below:

> *"16. At the bar reference was made to a number of decided cases on 'the question of the right of, father to No appointed or declared as guardian and to be granted custody of his minor children under S. 25 read with S. 19 of the Guardians and Wards Act. Those decisions were mostly decided on their own peculiar facts. We have therefore not considered it necessary to deal with them. To the extent however they go against the view we have taken of S. 25 of the Guardians and Wards Act, they must be held to be wrongly decided.*
>
> *18.The appellant's argument based on estoppel and on the orders made by the court under theIndian Divorce Act with respect to the custody of the children did not appeal to us. All orders relating to the custody of the minor wards from their very nature must be considered to be temporary orders made in the existing circumstances. With the changed conditions and Circumstances, including the passage of time, the Court is entitled to vary such orders if such variation is considered to be in the interest of the welfare of the wards. It is unnecessary to refer to some of the decided cases relating to estoppel based, on consent decrees. cited at the bar**. Orders relating to custody of wards even when based on consent are liable to be varied by***

VERDICTUM.IN

the Court, if the welfare of the wards demands variation."

(Emphasis Supplied)

16. The Apex Court in Yashita Sahu v. State of Rajasthan, **(2020) 3 SCC 67,** has observed as under:

> "***22.*** *A child, especially a child of tender years requires the love, affection, company, protection of both parents. This is not only the requirement of the child but is his/her basic human right. Just because the parents are at war with each other, does not mean that the child should be denied the care, affection, love or protection of any one of the two parents. A child is not an inanimate object which can be tossed from one parent to the other. Every separation, every reunion may have a traumatic and psychosomatic impact on the child. Therefore, it is to be ensured that the court weighs each and every circumstance very carefully before deciding how and in what manner the custody of the child should be shared between both the parents. Even if the custody is given to one parent, the other parent must have sufficient visitation rights to ensure that the child keeps in touch with the other parent and does not lose social, physical and psychological contact with any one of the two parents. It is only in extreme circumstances that one parent should be denied contact with the child. Reasons must be assigned if one parent is to be denied any visitation rights or contact with the child. Courts dealing with the custody matters must while deciding issues of custody clearly define the nature, manner and specifics of the visitation rights.*
>
> ***23.*** *The concept of visitation rights is not fully developed in India. Most courts while granting custody to one spouse do not pass any orders granting visitation rights to the other spouse. As observed*

VERDICTUM.IN

earlier, a child has a human right to have the love and affection of both the parents and courts must pass orders ensuring that the child is not totally deprived of the love, affection and company of one of her/his parents.

24. *Normally, if the parents are living in the same town or area, the spouse who has not been granted custody is given visitation rights over weekends only. In case the spouses are living at a distance from each other, it may not be feasible or in the interest of the child to create impediments in the education of the child by frequent breaks and, in such cases the visitation rights must be given over long weekends, breaks and holidays. In cases like the present one, where the parents are in two different continents, effort should be made to give maximum visitation rights to the parent who is denied custody.*

25. *In addition to "visitation rights", "contact rights" are also important for development of the child specially in cases where both parents live in different States or countries. The concept of contact rights in the modern age would be contact by telephone, e-mail or in fact, we feel the best system of contact, if available between the parties should be video calling. With the increasing availability of internet, video calling is now very common and courts dealing with the issue of custody of children must ensure that the parent who is denied custody of the child should be able to talk to her/his child as often as possible. Unless there are special circumstances to take a different view, the parent who is denied custody of the child should have the right to talk to his/her child for 5-10 minutes every day. This will help in maintaining and improving the bond between the child and the parent who is denied custody. If that bond is maintained, the child will have no difficulty in moving from one home to another*

VERDICTUM.IN

> *during vacations or holidays. The purpose of this is, if we cannot provide one happy home with two parents to the child then let the child have the benefit of two happy homes with one parent each."*

17. In view of the foregoing, the Order passed by the learned Family Court in grating visitation rights to the Respondent herein on every 1st and 3rd Saturday of every month from 3:00 PM to 5:00 PM in the Children Room, Family Court, North-West, Rohini, Delhi cannot be found fault with. Resultantly, the appeal is dismissed along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

RENU BHATNAGAR, J

OCTOBER 07, 2026
hsk